

House File 336 - Introduced

HOUSE FILE 336
BY BRANDENBURG

A BILL FOR

1 An Act providing an exemption from the computation of net
2 income for the individual income tax of net capital gain
3 from the sale or exchange of qualified capital stock and
4 including effective date and retroactive applicability
5 provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 422.7, subsection 21, paragraph a,
2 subparagraph (2), Code 2013, is amended to read as follows:

3 (2) For purposes of this ~~paragraph~~ subsection, "*lineal*
4 *descendant*" means children of the taxpayer, including legally
5 adopted children and biological children, stepchildren,
6 grandchildren, great-grandchildren, and any other lineal
7 descendants of the taxpayer.

8 Sec. 2. Section 422.7, subsection 21, Code 2013, is amended
9 by adding the following new paragraph:

10 NEW PARAGRAPH. *f.* (1) Net capital gain from the sale or
11 exchange of capital stock of a qualified corporation for which
12 an election is made by an employee-owner.

13 (2) (a) An employee-owner is entitled to make one
14 irrevocable lifetime election to exclude the net capital
15 gain from the sale or exchange of capital stock of one
16 qualified corporation which capital stock was acquired by the
17 employee-owner on account of employment by such qualified
18 corporation and while employed by such qualified corporation.

19 (b) The election shall apply to all subsequent sales or
20 exchanges of the elected capital stock, provided it is capital
21 stock in the same qualified corporation and was acquired on
22 account of employment by such qualified corporation and while
23 employed by such qualified corporation.

24 (c) The election shall apply to transfers of the capital
25 stock by inter vivos gift from the employee-owner to the
26 employee-owner's spouse or lineal descendants, or to a trust
27 for the benefit of the employee-owner's spouse or lineal
28 descendants. This subparagraph division (c) shall apply to a
29 spouse only if the spouse was married to the employee-owner on
30 the date of the sale or exchange or the date of death of the
31 employee-owner.

32 (d) If the employee-owner dies without making an election,
33 the surviving spouse or, if there is no surviving spouse, the
34 oldest surviving lineal descendent may make the election that
35 would have qualified under subparagraph division (c).

1 (e) The election shall be made by including a written
2 statement with the taxpayer's state income tax return for
3 the taxable year in which the election is made. The written
4 statement shall identify the qualified corporation that issued
5 the capital stock, the grounds for the election under this
6 paragraph "f", a statement that the taxpayer elects to have this
7 paragraph "f" apply, and any other information required by the
8 department. The department shall provide appropriate forms
9 for making elections and reporting exclusions pursuant to this
10 paragraph "f".

11 (3) For purposes of this paragraph:

12 (a) "*Capital stock*" means common or preferred stock, either
13 voting or nonvoting. "*Capital stock*" does not include stock
14 rights, stock warrants, stock options, or debt securities.

15 (b) "*Employee-owner*" means an individual who owns capital
16 stock in a qualified corporation, which capital stock was
17 acquired by the individual on account of employment by such
18 qualified corporation and while employed by such corporation.

19 (c) (i) "*Qualified corporation*" means a corporation
20 which, at the time of the first sale or exchange for which an
21 election is made under this paragraph "f", meets the following
22 conditions:

23 (A) The corporation has been in existence and actively doing
24 business in this state for at least ten years.

25 (B) The corporation has at least five shareholders.

26 (C) The corporation has at least two shareholders or
27 groups of shareholders who are not related. Two persons are
28 considered related when, under section 318 of the Internal
29 Revenue Code, one is a person who owns, directly or indirectly,
30 capital stock that if directly owned would be attributed to the
31 other person, or is the brother, sister, aunt, uncle, cousin,
32 niece, or nephew of the other person who owns capital stock
33 either directly or indirectly.

34 (ii) A qualified corporation shall include any member
35 of an affiliated group, as defined in section 422.32, if the

1 affiliated group includes a member that has been in existence
2 and actively doing business in this state for at least ten
3 years.

4 (iii) A qualified corporation shall include any corporation
5 that was a party to a reorganization that was entirely or
6 substantially tax free if such reorganization occurred during
7 or after the employment of the employee-owner.

8 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
9 immediate importance, takes effect upon enactment.

10 Sec. 4. RETROACTIVE APPLICABILITY. This Act applies
11 retroactively to January 1, 2013, for tax years beginning on
12 or after that date.

13 EXPLANATION

14 This bill grants an employee-owner, as defined in the
15 bill, one irrevocable lifetime election to exclude from state
16 individual income tax the net capital gain from the sale of
17 the capital stock of one qualified corporation. Several
18 requirements must be met for capital stock to qualify as
19 capital stock of a qualified corporation. First, the stock
20 must be either voting or nonvoting, common or preferred
21 stock. Stock rights, stock warrants, stock options, and debt
22 securities do not qualify. Second, the corporation that issued
23 the stock must be in existence and actively doing business
24 in Iowa for at least 10 years. A corporation that is part
25 of an affiliated group will qualify if the affiliated group
26 includes a member that has been in existence and actively doing
27 business in Iowa for at least 10 years. Third, the corporation
28 that issued the stock must have at least five shareholders,
29 two of whom must not be related. Fourth, the stock must have
30 been acquired by the employee-owner on account of employment
31 with the corporation and while employed by the corporation. A
32 corporation will qualify if it is a party to a reorganization
33 that was entirely or substantially tax free as long as the
34 reorganization occurred during or after the employee-owner's
35 employment.

1 The election shall apply to all subsequent sales of the
2 elected capital stock, provided it is capital stock in the same
3 qualified corporation and was acquired on account of employment
4 by the corporation and while employed by the corporation.

5 The bill provides that the election applies to transfers of
6 the capital stock by inter vivos gift from the employee-owner
7 to a spouse or lineal descendant, or to a trust for the benefit
8 of the employee-owner's spouse or lineal descendant. The
9 election will apply to a spouse only if the spouse was married
10 to the employee-owner on the date of the sale or the date of the
11 employee-owner's death.

12 If, after making a valid inter vivos transfer of stock that
13 meets all the requirements for an election, an employee-owner
14 dies without making an election, the surviving spouse, or if
15 there is no surviving spouse, the oldest surviving lineal
16 descendant may make the election.

17 An election is made by including a written statement
18 containing certain required information, as specified in the
19 bill, with the taxpayer's Iowa income tax return for the
20 taxable year in which the election is made. The department of
21 revenue is required to provide appropriate forms for making
22 elections and reporting exclusions.

23 The bill takes effect upon enactment and applies
24 retroactively to January 1, 2013, for tax years beginning on
25 or after that date.